IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1637 of 1984
With
CROSS OBJECTION No. 280 of 1998
In
FIRST APPEAL No. 1637 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SABJI ALI ALAJI MOMIN & 1 - Appellant(s)
Versus
USHABEN WD/O VIJAYKUMAR ROXDROUGH & 7 - Defendant(s)

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Appearance :
None for Appellants : 1 - 2
MR DK ACHARYA for Respondents : 1 - 3
NOTICE SERVED for Respondents : 4 - 6, 8
MR CHETAN PANDYA for MR SV RAJU for Respondent: 7

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/06/2007

COMMON ORAL JUDGMENT

1. None for the appellants; Shri D.K. Acharya, learned

counsel for the respondents no. 1 to 3; Shri Chetan Pandya, under the authority of Shri S.V. Raju, learned counsel for the respondent no.7; none for the respondents no. 4,5, 6 and 8 though served.

2. On 11.6.07, the matter was taken up for consideration, but as none appeared for the appellants, instead of dismissing the appeal for want of prosecution, I directed that it be taken up today. Even today, none appears for the appellants. First Appeal No. 1637/84 is dismissed for want of prosecution. Interim relief, if any, is vacated.

3. It is to be noted that the original claimants-respondents no. 1 to 5 have filed Cross Objections seeking enhancement and as Shri D.K. Acharya, learned counsel for the respondents no. 1 to 3 is pressing the Cross Objections, the Court would proceed to decide the said Cross Objections.

4. The appellants have filed this appeal against the judgment and award dated 21.2.84 delivered/made by the Member, M.A.C. Tribunal [Aux.], Narol, in M.A.C. Case No. 684/81[Main].

5. The short facts necessary for disposal of the present Cross Objections are that Vijaykumar, husband of the original claimant no.1 and father of

claimants no. 2 and 3 was driving his matador bearing registration No. GTF 3983 and was going from Baroda to Palanpur via Ahmedabad on the night of 19.11.81. When he reached near Bareja, a truck driven by original opponent no.1 Ahmedhusain Karim Ahmed Patel came from the opposite side. According to the allegations, it was driven rashly and negligently and was driven on the wrong side of the road, the oncoming truck dashed against the matador vehicle which resulted into a serious accident, the matador was badly smashed and the said Vijaykumar, husband of claimant no.1 was crushed in between the front portion of the cabin and the back of the cabin and died on the spot. The truck involved in the accident was bearing Registration No. GRW 79, it belonged to opponent no.2 Sabjiali and was insured with original opponent no.3 – New India Assurance Company Limited. After the death, the claimants had filed claim petition seeking a sum of Rs. 4,65,000/- by way of compensation.

6. Driver and the owner of the vehicle had filed their written statements in M.A.C. Case No. 684/81, inter alia, contending that the claim put forth by the original claimants was exaggerated; the deceased himself was negligent and was driving vehicle in

rash and negligent manner. They denied their total liability and prayed to the Court for dismissal of the Claim Petition. It is also to be noted that cleaner of the matador had also filed M.A.C. Case No. 685/81 which was also tried with the M.A.C. Case No. 684/81.

7. After recording the evidence and hearing the parties, the learned Tribunal awarded a sum of Rs. 1,000/- to Pradhanji Gajuji Thakor-original claimant in M.A.C. Case No. 685/81 and also made an award in the sum of Rs. 1,85,000/- with 6% interest and proportionate costs in favour of the claimants of M.A.C. Case No. 684/85.

8. Shri Acharya, learned counsel for the original claimants/respondents no. 1 to 3 submits that the learned Tribunal erred in holding that the total income of the deceased could only be Rs. 17,500/- per year and further erred in making deduction of 1/3rd of the amount from the same, less appreciating that if the family consisted of as many as six persons, 1/3rd of the amount earned by the deceased could not be spent on the deceased himself. His further submission is that future prospect of the deceased was not taken care of and in any case, multiplier of 15 in case of death of a young man of

23 years was also on the lower side.

9. Shri Chetan Pandya, learned counsel for the respondent no. 7 submits that M/s. United India Insurance Company Limited had insured the matador and they have no stakes in the matter. The matter is between the driver, owner and the Insurance Company of the offending truck and the original claimants.

10. None appears to oppose the Cross Objections.

11. From the records, it would appear that the deceased was virtually in the self employment and was plying matador after purchasing the same on loan. Undisputedly, within a period of six and half months, he had earned an amount of Rs. 33,985.74 ps. against which, total expenses were Rs. 23,083.84 ps. The learned Tribunal has struck out the balance and has observed that the income of the deceased could only be Rs. 8,868.60 ps. within the said period of six months, which would mean the income would be around Rs. 17,500/- per year. After coming to such conclusion, the Tribunal made deduction of 1/3rd of the amount towards personal expenses of the deceased and held dependency to be Rs. 12,000/- per year. In the opinion of this Court, while striking out the

balance between the credits and debits, the Tribunal has not appreciated that on one side, the deceased was in the self employment and from the earning of the matador, he was making payment of the installments. The payment of the installments, in fact, was the earning of the deceased and such earning should have been taken care of. It would appear from the statement of accounts that within a period of six and half months, the deceased had paid Rs. 15,000/- towards installments and this amount, in the opinion of this Court, should have been taken to be part of the income. If this amount could be earned and paid within a period of six months, then, additional income would be Rs. 30,000/- per year. But however, Shri Acharya submits that the total income of the deceased should be assessed at Rs. 20,000/- out of which personal expenses could be deducted to the extent of 15%, dependency should be calculated at Rs. 17,000/- per year. In the opinion of this Court, when a person works as a driver and has to run from place to place, then, his expenses would be little extra. I could understand a case where when a man is sitting in his house and is dining with his family and is not required to spend anything outside the home. However, looking to the

special circumstances of the case, I hold that the personal expenses of the deceased would be 25% or some of Rs. 5,000/- leaving Rs. 15,000/- as dependency.

12. So far as the application of multiplier in the present case is concerned, in the opinion of this Court, the Tribunal was little unjust in applying multiplier of 15%. Present was a case where multiplier of 17 should have been applied. On calculation of the dependency of Rs. 15,000/- per year and application of multiplier of 17 to the dependency, I hold that the claimants in the present Cross Objections would be entitled to a sum of Rs. 2,55,000/- towards the compensation. They would also be entitled to a sum of Rs. 10,000/- towards loss of company and expectancy of life, taking total entitlement to a sum of Rs. 2,65,000/-. This additional amount of Rs. 80,000/- would carry interest at the rate of 9% from the date of the application till payment.

13. The Cross Objections to the extent indicated above are allowed.

[R.S. GARG, J.]

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